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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/743,988	12/22/2003	Joshua M. Kopelman	2043.047US2	9050

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EXAMINER
SHEIKH, ASFAND M

ART UNIT	PAPER NUMBER
3627	

NOTIFICATION DATE	DELIVERY MODE
03/25/2011	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

USPTO@SLWIP.COM
request@slwip.com

	Application No.	Applicant(s)
Advisory Action **_Before the Filing of an Appeal Brief_**	10/743,988	KOPELMAN ET AL.
	Examiner	Art Unit	
	Asfand Sheikh	3627	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED <u>07 March 2011</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

   a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.

   b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

      Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

<u>NOTICE OF APPEAL</u>

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

<u>AMENDMENTS</u>

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);

   (b) ☐ They raise the issue of new matter (see NOTE below);

   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

      NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: _____.

   Claim(s) objected to: _____.

   Claim(s) rejected: <u>1-27</u>.

   Claim(s) withdrawn from consideration: _____.

<u>AFFIDAVIT OR OTHER EVIDENCE</u>

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome <u>all</u> rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

<u>REQUEST FOR RECONSIDERATION/OTHER</u>

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
   See Continuation Sheet.

12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.

13. ☐ Other: _____.

                                /Asfand Sheikh/
                                Primary Examiner, Art Unit 3627

Continuation of 11. does NOT place the application in condition for allowance because: The applicant argues that Nahan, Stack, Reuhl, and Woolston either alone or in combination, do not disclose "receiving data from an independent seller..., the data identifying a good offered for sale by the indepednent seller and representing the independent seller's agreement to sell the good at an unspecified fixed price to be determined by the marketeer controller as a function of another party's price for a comparable good, in accordance with a predetermined method," as required by Claim 1. The examiner disagrees.

The examiner would like to note that Woolston discloses selling the good in a marketplace as an item for sale at an unidentified/unspecified price (see at least, abstract). The examiner notes an auction would be considered to be an unspecified price based on a reasonable interpretation. Further Woolston discloses a "buy at" price which would represent a fixed price (see at least, col. 13, lines 63-67). Therefore Woolston discloses an unspecified fixed price under the interpretation of an auction with a "buy at" price. Further Reuhl was taught to disclose establishing with a pricing agent stored in the memory of the marketeer controller a sale price at which the good may be purchased by a buyer from the independent seller (see at least, col. 4, lines 7-19), the sale price derived, independent of a sale price suggested by the seller, by a predetermined method using as input the received vendor's price for the comparable good (see at least, col. 4, lines 7-19). Therefore the examiner notes the teachings of Woolston and Reuhl can be modified to in such a manner at they would be combinable to Nahan and further read on the applicant's claim. The examiner notes as interpreted Reuhl would read on deriving a price independent of a sale price suggested by the seller and further Woolston notion of an auction which represents an unidentified/unspecified fixed price of an item for sale derived by a broker (see at least, Woolston, col. 2, lines 27-38: the examiner notes a consignment node can be considered to be a marketer controller deriving a price of sale of a used good representing independent seller's agreement to sell the good at an unspecified fixed price). The examiner notes these notions can be combined to read on "receiving data from an independent seller..., the data identifying a good offered for sale by the independent seller and representing the independent seller's agreement to sell the good at an unspecified fixed price to be determined by the marketeer controller as a function of another party's price for a comparable good, in accordance with a predetermined method." Therefore the examiner finds the arguments not persuasive.

Further with respect to claim 2, the examiner notes the combination of Reuhl and Woolston would read on the argued limitation. Reuhl was taught to disclose establishing with a pricing agent stored in the memory of the marketeer controller a sale price at which the good may be purchased by a buyer from the independent seller (see at least, col. 4, lines 7-19), the sale price derived, independent of a sale price suggested by the seller, by a predetermined method using as input the received vendor's price for the comparable good (see at least, col. 4, lines 7-19). Woolston was taught to ddisclose selling the good in a marketplace as an item for sale at an unidentified/unspecified price (see at least, abstract). The examiner notes an auction would be considered to be an unspecified price based on a reasonable interpretation. Further Woolston discloses a "buy at" price which would represent a fixed price (see at least, col. 13, lines 63-67). Therefore Woolston discloses an unspecified fixed price under the interpretation of an auction with a "buy at" price which represents an expression of interest in purchasing the good, whereby a Price is derived (e.g. shown) at a time of sale to the buyer. Therefore the examiner finds the arguments not persuasive..